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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 * * *

6 ALAN JOHN FRICKX,

7 Plaintiff,

8 v.

9 LUIS MACIA VENEGAS, ET AL.,

10 Defendants.

Case No. 2:19-cv-00942-JAD-DJA

11 **ORDER**

12 This matter is before the Court on Plaintiff Alan John Frickx's Motion/Application for
13 Leave to Proceed *in forma pauperis* (ECF No. 1) and Complaint (ECF No. 1-1), filed on June 3,
14 2019.

15 **I. In Forma Pauperis Application**

16 Plaintiff filed the affidavit required by § 1915(a). (ECF No. 1). Plaintiff has shown an
17 inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in*
18 *forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further
19 **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's
20 complaint.

21 **II. Screening the Complaint**

22 Upon granting an application to proceed *in forma pauperis*, courts additionally screen the
23 complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the
24 action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted,
25 or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).
26 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
27 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
28

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
4 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
5 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th
6 Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
7 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
8 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it demands
9 “more than labels and conclusions” or a “formulaic recitation of the elements of a cause of action.”
10 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).
11 The court must accept as true all well-pled factual allegations contained in the complaint, but the
12 same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679. Mere recitals of the
13 elements of a cause of action, supported only by conclusory allegations, do not suffice. *Id.* at 678.
14 Secondly, where the claims in the complaint have not crossed the line from conceivable to
15 plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570. Allegations of a *pro se*
16 complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Hebbe v.*
17 *Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal construction of *pro se* pleadings
18 is required after *Twombly* and *Iqbal*).

19 In this case, Plaintiff attempts to bring claims under 42 U.S.C. § 1983 against four North
20 Las Vegas Police Officers, in their official capacity only. To state a claim under Section 1983, a
21 plaintiff must allege that a right secured by the Constitution has been violated and the deprivation
22 was committed by a person acting under color of state law. *See, e.g., Gibson v. U.S.*, 781 F.2d
23 1334, 1338 (9th Cir.1986); *West v. Atkins*, 487 U.S. 42, 48 (1988); *Long v. County of Los*
24 *Angeles*, 442 F.3d 1178, 1185 (9th Cir.2006). States and state officers sued in their official
25 capacity are not “persons” for the purposes of a section 1983 action, and generally, they may not
26 be sued under the statute. *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989). However,
27 Section 1983 does allow suits against state officers in their individual capacities. *Hafer v. Melo*,
28 502 U.S. 21, 26 (1991). Liability can attach to an officer in his individual capacity if the plaintiff

1 is able to establish: (1) that the official caused the deprivation of the plaintiff's rights while acting
2 personally under color of state law, and (2) that the official is not entitled to the protection of
3 qualified immunity. *See Kentucky v. Graham*, 473 U.S. 159 (1985); *Anderson v. Creighton*, 483
4 U.S. 635, 638 (1987).

5 Plaintiff claims he that his Fourth Amendment rights were violated on June 4, 2018
6 through three days of incarceration and one year post incarceration, in which he claims to have
7 suffered PTSD. Specifically, Plaintiff alleges that he was subject to an illegal search and seizure,
8 false arrest, and had a case dismissed on August 13, 2018 by Justice Court. Based on the paucity
9 of factual allegations, the Court is unable to find that Plaintiff can state a colorable Fourth
10 Amendment violation. It is unclear if he is challenging his state court case or the events leading
11 up to his arrest. Plaintiff will be given leave to amend and should include specific factual
12 allegations setting forth each claim, against each defendant, in order for the Court to determine if
13 his claims are able to survive screening.

14 IT IS THEREFORE ORDERED that Plaintiff's Motion/Application to proceed *in forma*
15 *pauperis* (ECF No. 1) is **GRANTED**. Plaintiff shall not be required to pre-pay the filing fee of
16 four hundred dollars (\$400.00). Plaintiff is permitted to maintain this action to conclusion without
17 the necessity of prepayment of any additional fees or costs or the giving of a security therefor.
18 This order granting leave to proceed *in forma pauperis* shall not extend to the issuance and/or
19 service of subpoenas at government expense.

20 IT IS FURTHER ORDERED that the Clerk of the Court shall file Plaintiff's Complaint
21 (ECF No. 1-1) on the docket, but shall not issue summons.

22 IT IS FURTHER ORDERED that the Complaint is dismissed without prejudice for failure
23 to state a claim upon which relief can be granted, with leave to amend. Plaintiff will have until
24 **April 15, 2020** to file an amended complaint if the noted deficiencies can be corrected. If
25 Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court cannot refer to a
26 prior pleading (i.e., the original complaint) in order to make the amended complaint complete.
27 This is because, as a general rule, an amended complaint supersedes the original complaint.
28 Local Rule 15-1(a) requires that an amended complaint be complete in itself without reference to

1 any prior pleading. Once a plaintiff files an amended complaint, the original complaint no longer
2 serves any function in the case. Therefore, in an amended complaint, as in an original complaint,
3 each claim and the involvement of each Defendant must be sufficiently alleged. **Failure to**
4 **comply with this order will result in the recommended dismissal of this case.**

5
6 DATED: March 25, 2020.



DANIEL J. ALBRECHTS
UNITED STATES MAGISTRATE JUDGE